

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference P28021/WO Kf	FOR FURTHER ACTION See Form PCT/IPEA/416	
International application No. PCT/EP2004/003251	International filing date (day/month/year) 26.03.2004	Priority date (day/month/year) 04.06.2003
International Patent Classification (IPC) or national classification and IPC		
Applicant ROHDE & SCHWARZ GMBH & CO. KG		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 7 sheets, including this cover sheet.

3. This report is also accompanied by ANNEXES, comprising:

a. ☐ (sent to the applicant and to the International Bureau) a total of _____ sheets, as follows:

☐ sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).

☐ sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.

b. ☐ (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:

<input checked="" type="checkbox"/>	Box No. I	Basis of the report
<input type="checkbox"/>	Box No. II	Priority
<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input type="checkbox"/>	Box No. IV	Lack of unity of invention
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
<input type="checkbox"/>	Box No. VI	Certain documents cited
<input type="checkbox"/>	Box No. VII	Certain defects in the international application
<input type="checkbox"/>	Box No. VIII	Certain observations on the international application

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

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Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

- ☐ This report is based on translations from the original language into the following language _____ which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
 - ☐ publication of the international application (Rule 12.4)
 - ☐ international preliminary examination (Rule 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

- ☐ the international application as originally filed/furnished
- ☒ the description:

pages 1-14 _____ as originally filed/furnished

pages* _____ received by this Authority on _____

pages* _____ received by this Authority on _____

- ☒ the claims:

nos. 1-14 _____ as originally filed/furnished

nos.* _____ as amended (together with any statement) under Article 19

nos.* _____ received by this Authority on _____

nos.* _____ received by this Authority on _____

- ☒ the drawings:

sheets 1/4-4/4 _____ as originally filed/furnished

sheets* _____ received by this Authority on _____

sheets* _____ received by this Authority on _____

- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

☐ the description, pages _____

☐ the claims, nos. _____

☐ the drawings, sheets/figs _____

☐ the sequence listing (*specify*): _____

☐ any table(s) related to sequence listing (*specify*): _____

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

☐ the description, pages _____

☐ the claims, nos. _____

☐ the drawings, sheets/figs _____

☐ the sequence listing (*specify*): _____

☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	<u>1-14</u>	YES
	Claims		NO
Inventive step (IS)	Claims		YES
	Claims	<u>1-14</u>	NO
Industrial applicability (IA)	Claims	<u>1-14</u>	YES
	Claims		NO

2. Citations and explanations (Rule 70.7)

This report refers to the following documents:

- D1: "Digital cellular telecommunications system (Phase 2+); Individual equipment type requirements and interworking; Special conformance testing functions (3GPP TS 44.014 version 4.2.0 Release 4); ETSI TS 144 014", ETSI STANDARDS, EUROPEAN TELECOMMUNICATIONS STANDARDS INSTITUTE, SOPHIA-ANTIPO, FR, Vol. 3-G2, No. V420, July 2002 (2002-07), XP014010543, ISSN 0000-0001
- D2: GOZALVEZ J ET AL: "On the effect of correlation in multislots link layer analysis for GPRS", IEEE VTS-FALL VTC 2000. 52ND, 24 September 2000 (2000-09-24), pages 444-450, XP010525204
- D3: US 2001/052091 A1 (FITZPATRICK GERARD ET AL), 13 December 2001 (2001-12-13)

1. Independent claims 1 and 9 fail to meet the requirements of PCT Article 6 because their subject matter is not clear. The reasons for this are as follows:

- a. Neither claim defines the relation between transmission blocks and multiblocks; they merely attempt to define the relation by implication

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(see claim 1, lines 21 to 29, and claim 9, lines 19 to 28). The wording in lines 24 to 26 can be interpreted as meaning that the number of transmission blocks per multiblock is variable, whereas in lines 27 to 29 it is stated that the number is not variable. As a result the actual relation is not clear to the reader. The relation should be defined in the introductory part of each claim.

- b. The wording in lines 20 to 23 of claim 1 ("the number of transmission blocks of multiblocks") is grammatically incorrect. It should read "the number of transmission blocks per multiblock" (see also the corresponding part of claim 9).
- c. Claim 1 refers in lines 21 to 24 to "transmission blocks which address the mobile radio device that is to be tested", yet in lines 6 to 8 it is stated that the transmission blocks are simply sent to the mobile radio device, not addressed to it. The same objection also applies to the corresponding part of claim 9.

2. On the basis of document D1, the subject matter of independent method claim 1 does not involve an inventive step.

It is noted that the claim merely attempts to state that a multiblock consists of a fixed number of transmission blocks. In particular, it does not state that for a particular mobile radio device a logical

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multiblock transmission channel consisting of multiple transmission blocks is first established, and then within this fixed "multiblock" the number of transmission blocks addressed to the mobile radio device is varied. According to the claim, a block consisting of 8 slots in direct succession as in D1 (shown, for example, in figure 1 of document D2) can be regarded as a multiblock.

Document D1 is an ETSI Specification relating to test procedures using a mobile device.

Regarding the essential features of claim 1 of the present application, D1 discloses the following:

- Different transmission tests with different numbers of transmission blocks (referred to in D1 as "slots") are carried out using the mobile radio device (see section 5.1 "Single slot TCH loops", and section 5.2 "Multi-slot TCH loops").
- For speech frames that have been successfully received (a speech frame consists of multiple slots), a first identifier (i.e. the received data) is sent back (section 5.2.3.1, fourth paragraph).
- For speech frames that have not been successfully received, a second identifier (i.e. a data block containing zeros) is sent back (section 5.2.3.1, fifth paragraph).
- This method can be used to determine a Frame Erasure Ratio (FER) (page 12, last paragraph).

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The subject matter of claim 1 differs from the method according to D1 because D1 does not disclose exactly how the individual transmission blocks (slots) sent to a mobile radio device during the test are selected, whereas in claim 1 the number of transmission blocks varies.

With tests to determine whether a manufactured device will function properly in actual use, the aim is generally to simulate all possible scenarios that might occur in real life. According to the specification, the number of slots used (and hence the "load on the device") can vary between 1 and 8, and therefore the mobile radio device must be able to operate with any of these numbers of slots (and hence any "load").

A person skilled in the art who is familiar with the disclosure of D1 would therefore follow the routine procedure of testing all 8 possible numbers of slots, and would thus arrive at what is claimed in claim 1 without having to exercise inventive skill.

The subject matter of claim 1 therefore does not involve an inventive step (PCT Article 33(3)), and hence claim 1 fails to meet the requirements of PCT Article 33(1).

3. The above arguments also apply to the subject matter of claim 9, which corresponds to claim 1 but instead contains device features. The subject matter of claim 9 is therefore not inventive, and the claim fails to meet the requirement of PCT Article 33(3).

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4. Dependent claims 2 to 8 and 10 to 14 do not contain any features that meet the PCT requirements in respect of inventive step when combined with the features of any of the back-referenced claims. This is because these claims relate only to special cases which a person skilled in the art would investigate in the course of the test. Since the positions of the slots can be chosen at will (see document D2, page 445, left-hand column, last paragraph), the skilled person would test all the possible combinations of slot numbers and slot positions one after the other.